CHONG HON NYAN

v.

LEE SIOK YEW

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[ORIGINATING SUMMONS NO. F 100 OF 1981]
4 SEPTEMBER 1981

UNINCORPORATED ASSOCIATIONS: *Societies - M.C.A. - Trustees holding lands in trust - Trustee removed, replaced by new trustee by Central Committee - Refusal by trustee to execute transfer documents to new trustees - Effect - Whether he had ceased to be trustee as result of removal - Application for vesting order - Sections 44(1)(a), 48(h) Trustee Act.*

Pursuant to Article 159 of the Constitution of the Malaysian Chinese Association (MCA) its General Committee appointed in 1975 a Board of Trustees consisting of three persons including the defendant in place of the retiring trustees, to hold lands in trust for MCA. Certain lands of MCA were subsequently registered in the name of the defendant jointly with the other two persons as trustees.

By a resolution of the Central Committee on 15 January 1978 the defendant was replaced by one Datuk Dr. Neo Yee Pan as one of the trustees of the Board of Trustees. On 25 December 1979 the Central Committee resolved to set up a new Board of Trustees replacing the then Board of Trustees. All efforts at trying to persuade the defendant to execute a transfer of trusteeship to the new trustees the lands hitherto registered in the names of the old trustees failed and the plaintiff finally took out this summons for all the lands of MCA in the trusteeship of the defendant to vest jointly in the new trustees, or alternatively for an order that the Senior Assistant Registrar or some fit and proper person execute in place of the defendant all the necessary documents of transfer of the said lands to vest the same in the new Board of Trustees.

The defendant argued that since he has been removed by the resolution of the Central Committee on 15 January 1978 he had ceased to be a trustee by virtue of Article 161 of the Constitution and it is not within his power to execute a transfer. Article 161 provides:-

> Every Trustee shall hold office until death, resignation or removal from office by the appropriate appointing authority for any reason whatsoever.

The plaintiff however contended that the removal of the defendant from office will not be effective until the defendant transferred the said lands to the new trustees.

Held:

[1] In view of the form in which the resolution of 15 January 1978 was made the Court agreed with the defendant that the removal from office took effect from the date of the resolution. It was not resolved that Datuk Dr. Neo Yee Pan should replace the defendant as a trustee after the defendant executes a transfer of the properties and since he had ceased to be a trustee it was not within his power to execute a transfer.

[2] A conveyance or assignment or a vesting order was necessary to vest the lands of MCA in the trustees and it was therefore expedient for the Court to make a vesting order under s. 48(h) of the Trustee Act.

Legislation referred to:
Trustee Act 1949, ss. 44(1)(a), 48(h)

Order

(1) Vesting order granted.
(2) Plaintiff's prayer for defendant to pay costs dismissed.
(3) Plaintiff to pay defendant's costs.

For the plaintiff - Koh Kek Hoe
For the defendant - Wong Seng Chow

(Digest Form Only)

Also found at [1982] CLJ 114